



ARIZONA DEPARTMENT OF HEALTH SERVICES

SMOKE-FREE ARIZONA

ANNUAL REPORT 2008



“Let’s Clear the Air Arizona”



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State of Arizona

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Executive Summary

On November 7, 2006, Arizona voters approved Proposition 201, the “Smoke-Free Arizona Act”. This new Law prohibits smoking inside and within 20 feet of entrances of most enclosed public places and places of employment, with few exceptions. The Law went into effect on May 1, 2007. If a Superior Court determines there is a pattern of noncompliance, the business owner is subject to fines between \$100 to \$500 per violation per day or up to \$5,000 per violation per day.

Also included in the proposition was a two-cent tax per pack of cigarettes to be deposited in the Smoke-Free Arizona Fund which must be used to enforce the provisions of the Law.

The provisions of the Act assigned implementation and enforcement of the Law to the Arizona Department of Health Services (ADHS). ADHS contracts with all but one of the state’s fifteen counties to assist the Office of Environmental Health with their efforts for education, compliance and complaint investigations.

In January 2007, ADHS launched a media campaign, established a toll-free information line and a website to educate the general public, employers and business owners about the requirements of the Law. In addition, ADHS provides the required No Smoking signs free of charge.

Prior to the Law going into effect, county health departments conducted on-site visits to local businesses, bars and restaurants providing advice and support to ensure the successful implementation and compliance with the Smoke-Free Arizona Act. Since the Law went into effect, a total of 93,268 educational visits and consultations with businesses and foodservice establishments have been conducted statewide between May 1st, 2007 and April 30th, 2008.

Most employers have responded extremely well in building compliance, showing a great willingness to achieve smoke-free workplaces.

Between May 1st 2007 and April 30, 2008 a total of 4,803 complaints have been filed from around the state. During the first month the Law went into effect, nearly 1400 complaints were filed. Since then, the number of complaints has declined steadily to level off at around 200 complaints filed monthly.

Between May 1st, 2007 and April 30th, 2008, a total of sixty notices of violations were issued statewide. Three court cases were brought before the Superior Court for injunctive relief. A total of \$12,900 in fines has been collected.

ADHS contracted the W.P. Carey School of Business at ASU to conduct an economic impact study about the effects of the Smoke-Free Arizona Act in Arizona. The final report is due for July 1st, 2008.



1.0 Background

On November 7, 2006, Arizona voters approved Proposition 201, called the “Smoke-Free Arizona Act”. The Proposition was passed to protect the citizens of Arizona from the harmful effects of second-hand smoke exposure. This new Law prohibits smoking inside and within 20 feet of entrances of most enclosed public places and places of employment, including (but not limited to) bars, restaurants, offices, sports facilities, healthcare facilities, and business vehicles.

Also included in the proposition was a two-cent tax per pack of cigarettes to be deposited in the Smoke-Free Arizona Fund which must be used to enforce the provisions of the Law.

The law went into effect on May 1, 2007. The only exemptions are private residences (except if used as a licensed child care, adult day care or health care facility), hotels and motels where not more than 50% of the rooms are designated as smoking, retail tobacco stores, veterans and fraternal clubs when not open to the general public, ceremonial use in the American Indian community, outdoor patios and theatrical performances. There are specific requirements to be met for each exemption in order to qualify for the exemption.

The Act also creates special requirements for employers and business owners. A proprietor must:

- (1) Communicate with employees to educate them about the law;
- (2) Clearly and conspicuously post "no smoking" signs at every establishment entrance;
- (3) Remove all indoors ashtrays and smoking receptacles and move all outdoors ashtrays and smoking receptacles at least 20 feet from entrances; and
- (4) Prohibit anyone such as employees, vendors, and customers from smoking within 20 feet of all entrances and inside the public place or place of employment.

The proprietor is subject to fines between \$100 to \$500 per violation per day or up to \$5,000 per violation per day if a Superior Court determines there is a pattern of noncompliance. An individual who smokes where prohibited is guilty of a petty offense and may be fined between \$50 to \$300.

2.0 Smoke-Free Arizona Program

2.1 Role and responsibilities of ADHS

The provisions of the Smoke-Free Arizona Act assigned implementation and enforcement of the Law to the Arizona Department of Health Services (ADHS). The Office of Environmental Health's existing statewide program made it a natural fit for planning and oversight of the Smoke-Free Arizona Act. This office referred to its experience with inspections and infrastructure to develop implementation and enforcement plans.

The implementation effort was lead by the ADHS Office of Environmental Health which formed the Smoke-Free Implementation Team. The team consisted of fifteen people including the Assistant Deputy Director, the Bureau Chief for Epidemiology and Disease Control, the County Liaison from the Office of the Director, the Communications Director, the Office Chief for the Office of Environmental Health, an advisor from Budget and Finances, the Health Section attorney from the Attorney General's Office, legal counsel from the Administrative Rules office and a representative from the Bureau of Tobacco Education and Prevention. This team met weekly from November 6, 2006 until the first week of May 2007.



The Smoke-Free Implementation Team included sub-groups that focused on the following responsibilities:

- Planning a media campaign using radio and print media
- Establishing a toll-free information line and launching a Web site in January 2007
- Drafting the exempt rules, holding public hearings and publishing the final rules
- Developing delegation agreements with the fifteen counties to conduct education, complaint investigation and enforcement activities
- Addressing the needs to conduct an economic impact study
- Reaching out businesses and employers such as state agencies, chambers of commerce, the Arizona Restaurant & Hospitality Association, the Arizona Licensed Beverages Association, major stakeholders and the highly frequented public places in the state
- Conducting on-site training for county health department staff
- Creating signage to be made available free-of-charge to businesses
- Getting ready for the May 1 implementation day with an online reporting system for complaints and a call center available two weeks before and after the implementation date.

2.2 Role and responsibilities of the county health departments

ADHS contracts with all but one of the state's fifteen counties to assist the Office of Environmental Health with their efforts for education, compliance and complaint investigation. Depending on the infrastructure in place in each county health department, either the environmental health program or the tobacco education program is responsible for the implementation of the Smoke-Free Arizona Act. County health departments must submit annual reports summarizing their program activities as required by their delegation agreements.

With regards to enforcement activities such as issuing notices of violations, assessing fines, and legal proceedings, nine counties are taking the lead in their respective county. For the other six counties, ADHS is responsible for the legal proceedings. The table 1 below illustrates the repartition of the duties for each county health department.

Table 1 – Repartition of the duties for each county health department

County	Lead Program	Education	Compliance & Complaint Investigation	Enforcement
Apache	Tobacco Education	Y	Y	Y
Coconino	Tobacco Education	Y	Y	Y
Cochise	Environmental Health	Y	Y	ADHS
Gila	Environmental Health	Y	Y	ADHS
Graham	Environmental Health	Y	Y	Y
Greenlee	Environmental Health	Y	Y	Y
La Paz	Tobacco Education	Y	Y	Y
Maricopa	Environmental Health	Y	Y	ADHS
Mohave	Environmental Health	Y	Y	Y
Navajo	Environmental Health	Y	Y	Y
Pima	Tobacco Education	Y	Y	Y
Pinal	Environmental Health	Y	Y	ADHS
Santa Cruz*	<i>*ADHS is responsible for education, compliance and enforcement</i>			
Yavapai	Tobacco Education	Y	Y	ADHS
Yuma	Tobacco Education	Y	Y	Y

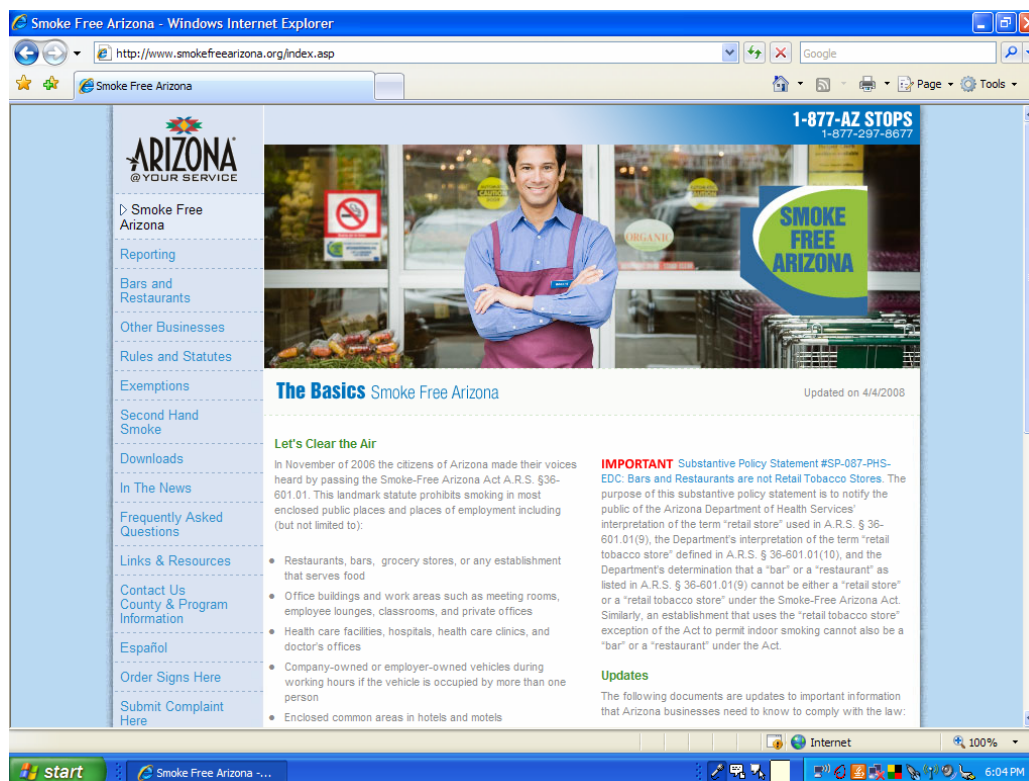
3.0 Education and Outreach

The Smoke-Free Arizona Act mandates ADHS to establish an internet website for the purpose of educating the public regarding the provisions of the Act and to inform businesses on how to comply with the Law.

3.1 Website: www.smokefreearizona.org

ADHS is thankful to the American Lung Association for the generous donation of the domain www.smokefreearizona.org. This allowed ADHS to effectively develop and launch a website explaining the Smoke-Free Arizona Act, and what businesses need to do to comply with the Law. Signs are available free of charge by submitting an online order. The website also lays out the procedure for reporting any business owner or employer that is in violation.

Useful information on the dangers of secondhand smoke, news, tips, updates, answers to frequently asked questions about the Law, and links to valuable resources, are also available on the website.



3.2 Toll-free information line: 1-877-AZ-STOPS (1-877-297-8677)

As required by the Smoke-Free Arizona Act, ADHS provides a 24/7 toll-free information line to answer inquiries from the general public and business owners. During business hours, the ADHS Smoke-Free Arizona program specialists answer the calls. After business hours, live assistance is provided by an answering services agency specially trained to answer general questions about the

requirements of the Law. An ADHS Smoke-Free Arizona program specialist will contact callers asking for further assistance during the next business day.

3.3 Email Address: smokefreearizona@azdhs.gov

As required by the Smoke-Free Arizona Act, ADHS provides an e-mail address exclusively used for the purpose of providing assistance to the general public and business owners about the requirements of the Law. The ADHS Smoke-Free Arizona program specialists reply to the messages received via the Smoke-Free Arizona mailbox.

3.4 Free Signage

By law, most public places and places of employment in Arizona are required to post smoke-free establishment signage. Signs are available free of charge by submitting an online order using the Smoke-Free Arizona website or by calling the helpline 1-877-AZSTOPS. Business proprietors also have the option of creating their own "No Smoking" signs. To meet the requirements, the signs must contain the international no smoking symbol or the words "no smoking", a citation to A.R.S. §36.601.01, the telephone number for making complaints (1-877-4-AZ-NOSMOKE), and the website address for making complaints www.smokefreearizona.org.

The demand for the free signage is very popular. Over 436,000 signs have been mailed during the first year. In addition, when the Law went into effect, signage was distributed to restaurants and other food establishments during routine food safety inspections conducted by county inspectors



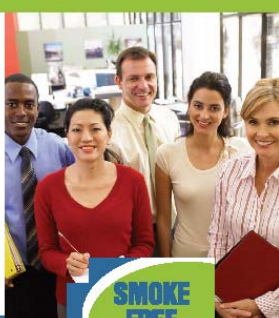
In order to help businesses comply with the Law, and to clarify the distance smoking is prohibited from an entrance, a "20-Foot Rule" add-on was created in October 2007. The purpose of the add-on is to remind customers, visitors and employees that smoking is prohibited within 20 feet of the entrance. This add-on is available free-of-charge by ordering online at smokefreearizona.org.

NO SMOKING INSIDE AND WITHIN 20 FEET OF THIS ENTRANCE. ARS§36-601.01

"20-Foot Rule" add-on (available free of charge by ordering online)

3.5 Brochure: “Clearing the Air about the Smoke-Free Arizona Act”

A brochure in both English and Spanish is available to inform employers and the general public about the requirements of the Smoke-Free Arizona Act. This brochure explains the purpose of the Law, what a employers needs to do to comply, exemptions to the law, the 20 Foot Rule etc. It also provides useful tips for going smoke-free.



Some Exemptions of the Law
While the goal of the Smoke-Free Arizona Act is to protect Arizona's citizens from the dangers of secondhand smoke, there are some specific public places where smoking will be allowed.

- Private residences (except when used as a licensed child care, adult day care or health care facility)
- Hotel and motel rooms designated as smoking rooms (no more than fifty percent of rooms rented to guests in a hotel or motel are so designated)
- Veterans and fraternal clubs, when they are not open to the general public
- Outdoor patios, so long as tobacco smoke does not enter areas where smoking is prohibited through entrances, open windows, ventilation systems, or other means

For a complete list of all the exemptions of the Smoke-Free Arizona Act, please visit our website at smokefreearizona.org.

Why It's Important
The main purpose of the Smoke-Free Arizona Act is to protect workers, customers, and the general public from the harmful effects of secondhand smoke in most enclosed public places and places of employment. Why is it so important?

- 4,000 chemical compounds have been identified in secondhand smoke, 200 are poisons and at least 40 cause cancer¹
- Exposure to the secondhand smoke of just one cigarette per day accelerates the progression of atherosclerosis (hardening of the arteries)²
- Smoke-filled rooms have up to six times the air pollution as a busy highway³
- Secondhand smoke is responsible for approximately 3,000 lung cancer deaths annually in U.S. non-smokers⁴

¹ American Lung Association, www.lungusa.org; ² American Heart Association, www.heart.org; ³ Center for Disease Control, www.cdc.gov; ⁴ American Cancer Society, www.cancer.org

Tips for Going Smoke-Free
Inform your employees about the new Law. Some effective ways to communicate with your employees are listed below:

- Discuss the Law at a staff meeting or distribute a memo to staff explaining the Law (fact sheet available online at smokefreearizona.org)
- Add a "No Smoking" policy to employee manual
- Explain that the Law doesn't prohibit smoking, it protects the health of employees and customers
- Include articles in your employee newsletter about the requirements of the Law and the health effects of secondhand smoke
- Distribute information about the Law as a paycheck insert
- Provide assistance to your employees who want to quit:

Call the Arizona Smokers' Helpline 1-800-556-8222 for free phone counseling, information about cessation programs in your area, and help with reduced cost medication. Resources are also available online at ashline.org.

For More Information
Visit smokefreearizona.org
Call 1-877-AZSTOP or 1-877-297-8677
Email: smokefreearizona@azdhs.gov

To Report a Violation
The public is encouraged to report a violation of the Smoke-Free Arizona Act to the Arizona Department of Health Services by one of the following options:
Fill out an online form at smokefreearizona.org
Call 1-877-4-AZNO-SMOKE or 1-877-429-6676
Email: nosmokingarizona@azdhs.gov

Arizona Department of Health Services
Office of Environmental Health
Smoke-Free Arizona Program
150 North 18th Avenue, Suite 430
Phoenix, AZ 85007-3247

Clearing the Air About the Smoke-Free Arizona Act

Arizona Department of Health Services

3.6 Media Campaign

The funding from the collection of the tobacco tax was used for the “Let’s Clear the Air Arizona” media campaign focusing on the benefits of Smoke-Free enclosed public places and places of employment for all Arizonans. The media campaign consisted of radio spots and print ads running from February through October 2007.

3.7 Outreach

County health departments conducted on-site visits to local businesses, bars and restaurants providing advice and support to ensure the successful implementation and compliance with the Smoke-free Arizona law. A total of 93,268 educational visits and consultations with businesses and foodservice establishments have been conducted statewide between May 1st, 2007 and April 30th, 2008.

County health departments were also reaching out to their community by giving presentations to local associations and organizations, presenting at more than 176 workshops, seminars and conferences statewide between May 1st 2007 and April 30, 2008.

Some county health departments mailed implementation kits, and in some instances made one-on-one calls to business owners to provide information and materials needed to assist them in becoming compliant with the new law.



Outreach and education for Santa Cruz County is the responsibility of the ADHS Smoke-Free program. An assessment was conducted by ADHS to determine the needs for Santa Cruz County. This assessment consisted of a site visit to Nogales, and interviews with large employers in the area. As a result of the assessment, it was determined that the main violation of Smoke-Free Arizona was a lack of required signage. Thus, a mass mailing to nearly 125 businesses which included signs in Spanish and English and a checklist for compliance was sent out. Upon later site visits to Santa Cruz County, the number of business with Smoke-Free Arizona signs greatly increased. Appropriate contacts have been established with the Nogales Chamber of Commerce and The Mariposa Community Health Center. Both organizations provide signs and brochures throughout the community.

In addition, the smoke-free program specialists at ADHS conducted on-site visits to large public places such as Sky Harbor Airport, University of Phoenix Stadium, Chase Field, Phoenix International Raceway, etc. The purpose of these site visits was to provide assistance to the facility management for challenging areas or events (high traffic areas, large entrances, out-of-state visitors, etc).

4.0 Compliance

4.1 Compliance verification

Most employers responded well in achieving building compliance and smoke-free workplaces. Many local bars and restaurants have quickly come into compliance with the smoking ban by making the necessary changes such as posting the required No Smoking signs, moving ashtrays and informing employees and customers about the requirements of the Law.

County health inspectors monitor compliance for foodservice establishments and bars during food safety inspections. If a violation is observed, the county health inspector will ask the proprietor to correct the violation. A re-inspection may take place to ensure the corrective actions have been done.

“We are also seeing very high levels of co-operation during these inspections, which reflects the goodwill and positive approach that employers and employees have given to this important health measure”.

Stephanie McDowell, Smoke-Free Arizona Coordinator, Press Release issued by La Paz County, Arizona. July 2007

For other public places and places of employment, compliance is verified following the receipt of a complaint or, if there is a reason to believe a violation of the Smoke-Free Arizona Act exists.

4.2 Reports of violations

The public is encouraged to report businesses that are not in compliance with the Smoke-Free Arizona Act by contacting the Arizona Department of Health Services. Complainants may remain anonymous, and complaints may be reported by:

- Calling the toll-free number 1-877-4-AZ-NOSMOKE (1-877-426-6676)
- Sending an Email at nosmokingarizona@azdhs.gov
- Submitting a complaint online at www.smokefreearizona.org



Between May 1st 2007 and April 30, 2008 a total of 4,803 complaints have been filed statewide. During the first month the Law went into effect, nearly 1400 complaints were filed. Since then, the number of complaints has declined steadily to level off at less than 200 complaints per month.

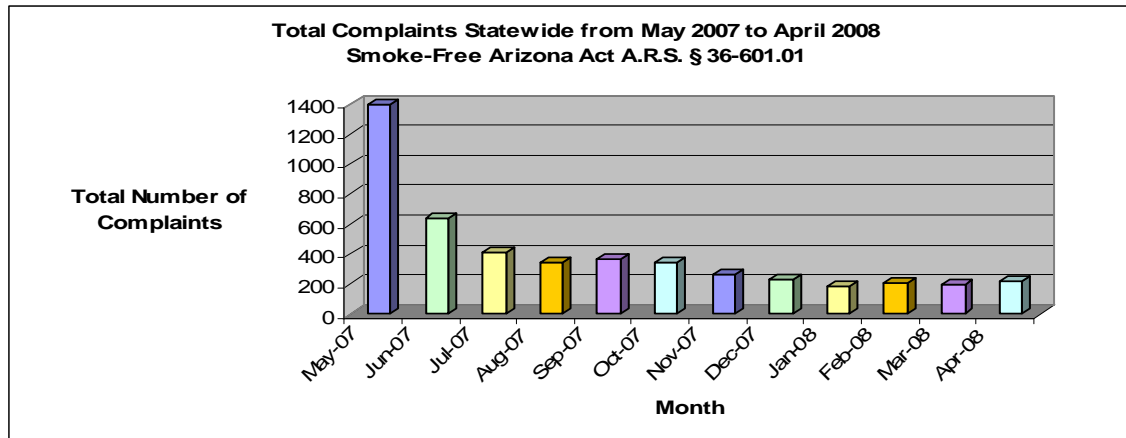
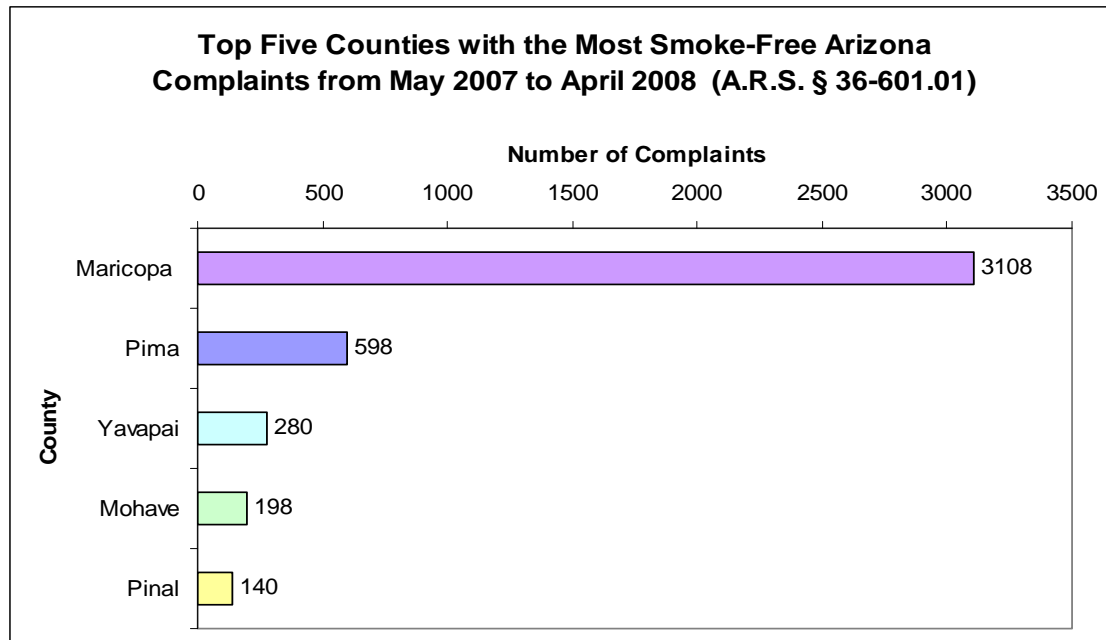


Table 2 indicates the number of complaints received each month for each county during the first year the Law went into effect.

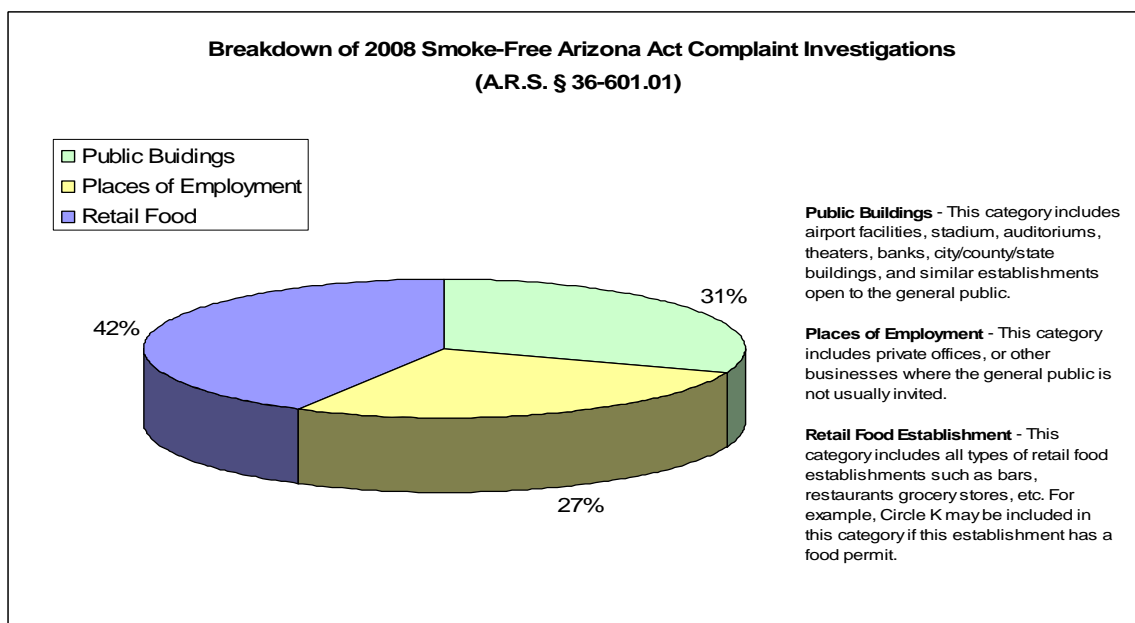
Table 2 – Number of complaints received monthly for each county between May 1st 2007 and April 30th, 2008

County	May 07	June 07	July 07	Aug 07	Sep 07	Oct 07	Nov 07	Dec 07	Jan 08	Feb 08	Mar 08	Apr 08	TOTALS
Apache	1	2	1	3	1	0	1	0	1	0	1	0	11
Cochise	21	8	11	10	3	8	1	8	3	0	4	3	80
Coconino	13	5	10	11	10	4	8	3	5	8	2	6	85
Gila	13	5	2	25	17	2	2	5	0	1	0	1	73
Graham	29	4	1	0	1	1	0	0	0	1	0	1	38
Greenlee	5	10	0	0	0	0	0	1	0	1	1	0	18
La Paz	11	2	2	2	3	6	1	2	7	2	0	1	39
Maricopa	982	388	271	203	245	192	159	158	104	142	124	140	3108
Mohave	62	27	19	10	6	13	5	11	16	7	14	8	198
Navajo	7	13	8	2	2	3	3	0	0	0	3	3	44
Pima	182	81	39	45	32	49	33	18	31	28	20	40	598
Pinal	24	36	13	11	22	11	6	2	5	4	5	1	140
Santa Cruz	0	2	1	0	0	0	0	0	0	0	0	0	3
Yavapai	32	35	24	17	14	43	42	20	11	16	14	12	280
Yuma	13	15	6	5	9	9	7	5	7	2	6	4	88
TOTALS	1395	633	408	344	365	341	268	233	190	212	194	220	4803

Most complaints are related to incorrect or missing signage, people smoking within 20 feet of an entrance, or the presence of an ashtray within 20 feet of an entrance. The counties who received the most complaints are: Maricopa (3,101), Pima (598), Yavapai (280), Mohave (198), and Pinal (140).



Alleged violations of the Act have been classified to one of following categories: retail food establishments (42%), public places where the general public is invited (31%), or places of employment (27%).





4.3 Complaint Investigation

All but one of the state's fifteen counties are responsible to investigate complaints alleging violations of the Smoke-Free Arizona Act (see Table 1, p. 5). The county health department will conduct an inspection and/or notify the business owner within 15 days after receipt of the complaint. During the complaint inspection, if violations are observed, the proprietor will be notified of the violations and what he/she needs to do to comply with the Law. A re-inspection may take place to verify that the business owner implemented the corrective actions.

5.0 Enforcement

5.1 Procedures

Nine county health departments have the delegated authority for the enforcement of the Smoke-Free Arizona Act. These counties are: Apache, Coconino, Graham, Greenlee, La Paz, Mohave, Navajo, Pima and Yuma. For the other six counties Cochise, Gila, Maricopa, Pinal, Santa Cruz and Yavapai, ADHS is responsible for the enforcement proceedings (see Table 1, p. 5).

If the proprietor does not take the appropriate actions to correct the violations or refuses to comply with the Law, a notice of violation is issued.

There are two enforcement routes:

- 1) Going through administrative rules by issuing a Notice of Violation with an Assessment of fines. This is defined by R9-2-111 and R9-2-112 of the Arizona Administrative Code. The county (or ADHS) may impose a civil penalty between \$100 and \$500 for each violation. Each day that a documented violation occurs, constitutes a separate violation.
- 2) Applying for an injunctive relief to enforce provisions of the Law in the Superior Court. If the Superior Court finds the violations willful or evidence of a pattern of non-compliance, the Court may impose a fine up to \$5000 per violation (as per A.R.S. 36.601.01(G) (8)). The injunctive relief (Superior Court) usually stops the smoking more quickly than the administrative route.

5.2 Legal Proceedings

Between May 1st, 2007 and April 30th, 2008, a total of sixty notices of violations were issued statewide. Three important cases brought before the Superior Court for injunctive relief, resulted in a total of \$12,900 in fines:

Metro Sportz Bar, Phoenix

Permanent injunction granted on June 15, 2007 by Maricopa County Superior Court and settlement reached between the Attorney General's Office, ADHS and the owner on January 28, 2008. The settlement required the owner to pay \$10,000 in fines.

Circle H Saloon, Fort Mohave

Three notices of violations issued to Circle H Saloon. The owner was ruled to pay a total of \$1,900 in fines by the Mohave County Superior Court on January 7, 2008.

Hooligan's Irish Pub, Prescott

Yavapai County Superior Court awarded Smoke-Free Arizona \$10,000 in civil penalties from Hooligan's Irish Pub. January 25, 2008 both parties reached a settlement for an initial payment of



\$1,000. The remaining \$9,000 is deferred unless the bar owner is found in violation of permitting smoking in the establishment.

5.3 Challenges

Several bars and restaurants attempted to utilize the “retail tobacco store” exemption that would allow smoking in other otherwise prohibited smoking areas under the Smoke-Free Arizona Act. A revised substantive policy statement #SP-087-PHS-EDC clarifying “Bars and Restaurants Are Not Retail Tobacco Stores” was issued on December 2nd, 2007. The purpose of the substantive policy statement was to notify the public that the Smoke-Free Arizona Act delineates that a bar or a restaurant cannot be both a retail store and a retail tobacco store. Similarly, an establishment that uses the retail tobacco store exemption of the Smoke-Free Arizona Act to permit indoor smoking cannot also be a bar or a restaurant (see Appendix A).

6.0 Economic Impact Study

In spite of rumors and trepidation abound when it comes to talk of smoking bans in restaurants and bars, the owners of such concerns wish to be left to run their businesses as they please while the community at large seems to want to avoid second-hand smoke. To find answers to questions about the effects of the Smoke-Free Arizona Act in Arizona, ADHS contracted with the W.P. Carey School of Business at ASU to conduct an economic impact study.

Four main components make up the study conducted by W.P. Carey School of Business: an examination of the published literature, a pre- and post- ban survey of restaurants and bars, and an analysis of the tax revenue effects. The final report is due out on July 1st, 2008.

Thus far, the pre- and post- ban surveys are complete, and the tax revenue data has been collected for pre- and post- ban periods. A similar set of questions was used for the post-ban survey in order to have comparable data to the pre-ban survey. It is also proving valuable in trying to separate the effects of economic conditions and the effects of the Smoke-Free Arizona Act. All the counties in Arizona were included during the survey.

Several events over the past year are posing problems for the data analysis. In particular, economic conditions in Arizona have deteriorated rapidly since 2007 and it is a challenge to separate the effect of the smoking ban from that of the general economic downturn in Arizona.



7.0 Conclusion

The successful implementation of the Smoke-Free Arizona Act is due to the tremendous efforts from the time the voters passed the Smoke-Free Arizona Act in November 2007 until the Law went into effect on May 1st 2007.

Despite the very short timeline, rule writers at ADHS drafted the rules diligently for presentation at three public meetings held in March 2007. The final rules were published on April 27, 2007. In the meantime, the Smoke-Free implementation team was able to achieve a successful media campaign, reach out to businesses and major public places, foster partnership with stakeholders groups, launch a website and a toll-free information line, create and distribute free-of charge signage to businesses, prepare contracts with the county health departments for compliance and enforcement of the Act, provide training in each county with the delegated authority for education, compliance and enforcement, and finally set up a statewide online complaint reporting system.

On May 1st 2007, ADHS and the county health departments were ready to initiate the Smoke-Free Arizona program, provide assistance to businesses, and address complaints alleging violations of the new Law.

The Law was implemented statewide in a timely and effective manner. Businesses quickly came into compliance by making the necessary changes such as posting the required No Smoking signs, moving ashtrays from prohibited areas and informing employees and customers about the requirements of the Law.

We are proud to state that one year after the Law went into effect, a high level of compliance has been achieved statewide. Most employers responded well in creating smoke-free workplaces while the number of complaints declined significantly, this resulting in cleaner air for Arizona residents.



Appendix A



**ARIZONA DEPARTMENT OF HEALTH SERVICES
DIVISION OF PUBLIC HEALTH SERVICES
SMOKE-FREE ARIZONA PROGRAM**

SUBSTANTIVE POLICY STATEMENT

#SP-087-PHS-EDC

(Revision of substantive policy statement #SP-086-PHS-EDC)

Bars and Restaurants Are Not Retail Tobacco Stores Under Smoke-Free Arizona

This substantive policy is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedures Act. If you believe that this substantive policy does impose additional requirements or penalties on regulated parties, you may petition the agency under the Arizona Revised Statutes Section 41-1033 for a review of the statement.

The purpose of this substantive policy statement is to notify the public of: the Department's interpretation of the term "retail store" used in A.R.S. § 36-601.01(9), the Department's interpretation of the term "retail tobacco store" defined in A.R.S. § 36-601.01(10), and the Department's determination that a "bar" or a "restaurant" as listed in A.R.S. § 36-601.01(9) cannot be either a "retail store" or a "retail tobacco store" under the Smoke-Free Arizona Act.

Under the Smoke-Free Arizona Act ("the Act"), smoking is prohibited in public places, such as: airports, banks, bars, common areas of apartment buildings, condominiums or other multifamily housing facilities, . . . , restaurants, retail stores, shopping malls, sports facilities, theaters, and waiting rooms. *See generally* A.R.S. § 36-601.01(A)(9). Under the Act, a "retail tobacco store" is defined as a "retail store." A.R.S. § 36-601.01(A)(10). A "retail store," like a "bar" and a "restaurant," is listed under the Act as a type of "public place" where smoking is prohibited. A.R.S. § 36-601.01(A)(9). Although a "retail store" is a type of "public place," under the Act, a "retail tobacco store" is exempt from the smoking prohibition. A.R.S. §§ 36-601.01(A)(9) and 36-601.01(B)(3).

Only a "retail store" that derives the majority of its sales from tobacco products and accessories is exempt from the Act's smoking prohibition. *See generally* A.R.S. §§ 36-601.01(A)(10) and 36-601.01(B)(3). Under the Act, the Department interprets a "retail store" to be a type of "public place" established with the appropriate permits and licenses from the appropriate jurisdictions to do business selling products and merchandise to the public. Under the Act, the Department interprets a "bar" to be a type of "public place" that is licensed under A.R.S. §§ 4-209(B)(6), (7), (11), (12), or (14), to do business selling and serving alcoholic beverages for consumption on the premises. Under the Act, the Department interprets a "restaurant" to be a type of "public place" possessing a food establishment license to do business selling and serving food for consumption both on and off the premises.

The "plain meaning" of the Act clearly defines a "retail tobacco store" to be a type of "retail store." A.R.S. § 36-601.01(A)(10). If a "retail tobacco store" was intended to be another type of "public place" under the Act, such as a "bar" or "restaurant," A.R.S. § 36-601.01(A)(10) would



have stated such. The Department interprets this omission to mean that only a “retail store,” which derives the majority of its sales from tobacco products and accessories, is capable of being a “retail tobacco store” under the Act. In addition, the Department interprets “retail stores,” “bars,” and “restaurants” to be distinct types of “public places” under the Act. A.R.S. § 36-601.01(A)(9). Accordingly, since only a “retail store” is capable of being a “retail tobacco store” and since neither a “bar” nor a “restaurant” is a “retail store” under the Act, neither a “bar” nor a “restaurant” is capable of being a “retail tobacco store” under the Act.

This holds true, regardless of whether a “bar” or “restaurant” alters its operations to include retail sales of tobacco products and accessories or allows smoking during hours in which alcohol or food is not served. Since a “bar” or “restaurant” is not a “retail store” under the Act, neither a “bar” nor a “restaurant” is capable of transforming itself into “retail tobacco store.”

Only “retail stores” are capable of utilizing the exception to the Act’s smoking prohibition. A.R.S. §§ 36-601.01(A)(10) and 36-601.01(B)(3). “Bars” and “restaurants” that wish to permit patrons to smoke may utilize the outdoor patio exception found in A.R.S. § 36-601.01(B)(6).

Similarly, an establishment that uses the “retail tobacco store” exception of the Act to permit indoor smoking cannot also be a “bar” or a “restaurant” under the Act. For example, a “retail tobacco store” that permitted indoor smoking and that served food for consumption on or off the premises under a food establishment license or sold alcoholic beverages for consumption on the premises under a license issued under A.R.S. §§ 4-209(B)(6), (7), (11), (12), or (14) before the effective date of the Act will no longer be permitted to do so. Neither may a “retail tobacco store” that permits indoor smoking add food or alcohol service after the effective date of the Act. However, the Act and this substantive policy statement do not prohibit an establishment that qualifies for the “retail tobacco store” exception to instead choose to sell tobacco products and accessories as well as food or alcohol in an indoor environment that is kept smoke-free at all times. Such establishments may, like any other bar, restaurant, retail store, or other “public place” subject to the Act, utilize the outdoor patio exception to permit patrons to smoke.

Effective: December 18, 2007
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